

CHAPTER 2

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LEGAL ASPECTS

0201. GENERAL

a. The legal aspects of law enforcement are a result of statutes, regulations, and court decisions. Criminal law is in a constant state of change. Every year, military and civilian courts at all levels render decisions which affect police procedures and policies. Within the Department of the Navy, the Office of the Judge Advocate General (JAG) is responsible for reviewing laws, regulations, and court decisions and establishing policies and procedures. Staff Judge Advocates (SJA), Navy Legal Service Offices (NLSOs), and command legal officers will provide specific guidance to security officers on legal matters.

b. Security officers and security department training officers will continually monitor changes to procedures and revise Phase I and Phase II training lesson plans accordingly. In addition, security officers will use roll call training to publish changes as they occur.

0202. JURISDICTION AND AUTHORITY. The jurisdiction and authority of Navy law enforcement specialists is limited. The security officer will prepare Standard Operating Procedures (SOPs) defining the law enforcement jurisdiction of the security department. Included will be persons subject to the authority of the security department, geographic boundaries of jurisdiction, including level, i.e., exclusive, concurrent, or proprietary, and any agreements or understandings with local law enforcement or host nations.

a. Off-base apprehensions. When authorized by a commanding officer or his/her designee in support of a military purpose, Navy law enforcement personnel may apprehend a military member off-base. A suspected military member in civilian attire should first be identified by a civilian law enforcement officer to avoid the unlawful apprehension or detention of a civilian.

b. Naval Criminal Investigative Service (NCIS) jurisdiction includes major criminal offenses and counterintelligence cases. A major criminal offense has been defined as any offense punishable by death or imprisonment for a term exceeding 1 year. An incident in either of these matters requires immediate notification of an NCIS agent before any substantive investigative steps are taken by the command, including interrogations or searches of property unless such steps are necessary to protect life or property or to prevent the destruction of evidence.

(1) In instances where an immediate response by NCIS is not feasible (e.g., vessels underway without assigned agents) commanding officers may conduct such

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preliminary investigations as circumstances dictate, preparatory to a later full investigation by NCIS. NCIS should be immediately notified to facilitate guidance to the command.

(2) NCIS may decline the investigation of some cases. If this should occur, the requesting command will document that the case was declined by NCIS on the IR including the time/date notified, agent notified, and the time/date declined, and the agent declining.

c. NCIS is responsible for liaison with all Federal law enforcement, security, and intelligence agencies, and the primary liaison with State and local agencies in matters of criminal investigation and counterintelligence.

0203. ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE (UCMJ)/MIRANDA RIGHTS. General guidance on the use of Article 31, UCMJ and Miranda Rights is to be provided in Phase I and Phase II security department training. However, actual application of these rights will be continually monitored by security officers, training officers, and field training officers. The following special provisions apply:

a. Persons under the influence of alcohol/drugs will not be questioned about a criminal matter, except in matters of extreme emergency. Any waiver of rights made by such a person will be questionable. Other information (e.g., personal data) may still be obtained.

b. Juveniles. See Chapter 11 regarding juveniles.

c. Foreign Nationals. In a foreign country where the United States maintains military facilities, a citizen of that country, or another foreign country, may commit an offense against the property of the United States, or against the person or property of members assigned to military forces located at that activity. These suspects are not subject to the laws of the United States. Therefore, if they are interrogated as criminal suspects, they should be warned or advised in accordance with the procedures that control such advice in the country where the base is located. Status of Forces Agreements may also apply. Specific guidance will be obtained from the local SJA.

d. Non-English Speaking Persons and Foreign Visitors. Generally speaking, all people within the United States, whether citizens or not, are subject to the laws of this country. Therefore, with the exception of diplomatic personnel, these individuals should be afforded the same treatment as that given to all U. S. citizens. Any person, whether non-English speaking U. S. citizen or foreign visitors, will not be questioned until their level of understanding of their rights can be fully ascertained. If there is any question, contact the SJA for guidance.

e. Prior Admissions/Cleansing Warnings. Occasionally a situation will occur where a suspect has made incriminating statements to a command representative, or to other police personnel, without a proper Article 31 warning beforehand. When it is suspected that an existing criminal admission was improperly obtained from a suspect, the suspect must be advised that the

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previous admission cannot be used against him/her in a trial by court-martial or other court of law. A "cleansing warning" must be provided to the suspect, (e.g., "I advise you that any prior admissions or other improperly obtained evidence which incriminated you cannot be used against you in a trial by court-martial or other court of law."), as appropriate. This statement will be acknowledged at the bottom of the appropriate rights advisement form. Prior questionable admissions made by a suspect must be completely documented to include particulars about previous warnings. This information will be included in the ROI and any documents pertaining to the report.

0204. SEARCH AND SEIZURE. General information on searches and seizures is found in reference (e). Up-to-date information may be obtained from the SJA or the servicing NLSO. The following are additional guidelines:

a. Command Authorized Searches (probable cause search authorizations)

(1) Prior to issuance of a command authorized search, the Affidavit for Search Authorization (OPNAV 5580/10) will be completed and signed, under oath.

(2) The Command Authorization for Search and Seizure (OPNAV 5580/9) will be prepared for the commanding officer's signature.

(3) In conducting the search, the individual(s) having proprietary interest over the premises should be present. A copy of the signed OPNAV 5580/9 must be given to the individual, and he/she will be given sufficient time to read it. If the individual is also the suspect of the offense, then no questions will be asked without appropriate self-incrimination warnings (this does not include requests for identification). After serving the authorization, it is permissible to ask the individuals present to open locked doors, lockers, etc., providing they are cooperative and not a risk to the safety of security personnel or likely to damage or conceal evidence. If individuals are not cooperative, or refuse to open locks, the locks may be forced open by police in such a manner as to cause the least amount of damage to the property.

(4) Occasionally, a search authorization may be served on an unoccupied premise, vehicle, shipping container, etc. In such situations, a command representative should be present to witness the search. A copy of the authorization will be left with the representative to be delivered to the suspect. Another copy, plus a receipt for property seized, will be left at the premises. It is the security personnel's responsibility to secure the unoccupied premise after the search to prevent theft and vandalism.

(5) Following the search, a receipt for the property seized must be completed and provided to the individual with proprietary interest in the property, along with a copy of the authorization. A signed receipt must then be returned to the commanding officer authorizing the search. The original of the search authorization and affidavit will be retained by the security department conducting the search.

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b. Permissive Search Authorizations

(1) A Permissive Authorization for Search and Seizure (OPNAV 5580/16) will be completed prior to the search. Oral consent authorization may be made in emergency situations, but only with sufficient witnesses present to testify that permission for the search was given voluntarily.

(2) A subject should be advised that the permission to search is voluntary. There should be no further statement made to the individual to imply that if they do not consent, a search warrant will be obtained and the search conducted regardless. Security personnel should record the exact words of a subject and of the person giving the advice in their field notes.

(3) A subject may withdraw consent at any time. If, during the course of a search, a subject states he or she does not want the search to continue, then it must be terminated. Any evidence uncovered to that point may be used to substantiate probable cause, and the matter presented to the commanding officer for a search authorization, if appropriate.

(4) At the completion of the search, a receipt will be given to the subject for any property seized. There is no requirement to provide a copy of the permission authorization form to the subject, although there is no objection to doing so if the subject requests it. The original form will be kept by the security department conducting the search.

c. The last page listing only blocks 1 through block 16 of the Evidence/Property Custody Document (OPNAV 5580/22) will be used as a receipt for property seized.

0205. LINEUPS

a. For the results of a lineup to be admissible in court, the suspect must be viewed with other individuals of the same sex and race, and with other similar physical characteristics and clothing. For lineups of objects (e.g., weapons, photos, etc.) similar rules apply. Lineups, when conducted, will be photographed for later verification that requirements regarding similarity were adhered to.

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b. A suspect does not have the right to refuse to participate in a lineup. However, the suspect does have the right to consult with legal counsel and have legal counsel present during a lineup. The Lineup-Acknowledgment and Waiver of Rights form (OPNAV 5580/5) will be used for a suspect who chooses not to consult with a lawyer or have one present at the lineup. This form is not used when the suspect requests a lawyer.

0206. MEDICAL RECORDS

a. Records of medical treatment obtained at U. S. Naval medical facilities are the property of the U. S. government, and may be obtained by security personnel for investigative purposes if the subject completes the Authority to Release Medical Information and Records (OPNAV 5580/14).

b. In the event the Navy law enforcement officer/investigator cannot get a voluntary waiver from the person whose medical records are sought, it may become necessary to seek a subpoena from a local judicial officer for access to the information held by a non-Department of Defense health care provider.

c. Whenever medical records from naval facilities are requested by local law enforcement officers/investigators, the request must be in writing from that agency.

0207. FINANCIAL RECORDS. A Customer Consent and Authorization for Access to Financial Information form (OPNAV 5580/13) will be completed to gain access to records of banks, credit unions, and other financial institutions. Consultation with the local SJA should be made to ensure compliance with the Right to Financial Privacy Act of 1978.